



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY  
DOCKET NO. 06-0007

## IN THE MATTER OF DAVID M. LUNNY

### DISPOSITION AGREEMENT

The State Ethics Commission and David M. Lunny enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On December 16, 2003, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict-of-interest law, G.L. c. 268A, by Lunny. The Commission has concluded its inquiry and, on September 21, 2005, found reasonable cause to believe that Lunny violated G.L. c. 268A.

The Commission and Lunny now agree to the following findings of fact and conclusions of law.

### Findings of Fact

1. On or about September 8, 2002, Lunny executed and contracted with the Mendon-Upton Regional School District to serve as an "owner's representative" on the construction of the Memorial Elementary School in Upton ("the school project").
2. The Mount Vernon Group, a private architectural firm, served as the school project architect. Mount Vernon Group employee Tim Sampson was the daily on-site project manager, and Mount Vernon Group principal Greg McIntosh was at the site once or twice per week to check on the project's progress and coordinate with Sampson.
3. As an owner's representative, Lunny served as the on-site eyes and ears of the school building committee, reporting back to it on the progress of the project and any other issues that he thought he should bring to the committee's attention. These reports could include an assessment as to how the school project architect, the Mount Vernon Group, was performing its responsibilities.
4. Lunny was not friendly with either McIntosh or Sampson, and Sampson found him particularly difficult to deal with regarding the school project.
5. Sometime in fall 2002, while on the job site, Lunny asked Sampson for private help on a project that Lunny was planning to build at his house. The structure was to be a free-standing, two-story garage/office. Sampson told Lunny that he would work on it for \$30/hour, which was his usual rate for freelance work. Lunny did not take Sampson up on that offer.

6. A few months later, Lunny approached McIntosh in the school project onsite field office just after a site meeting. Lunny showed McIntosh some photographs and plans that Lunny had created for his proposed garage/office structure. They discussed the project for a few minutes, and Lunny then asked McIntosh if he would review the documents and produce computer-aided drawings that reflected what they had talked about. They did not discuss payment.

7. McIntosh took Lunny's documents home and worked on them occasionally over the course of several months, creating schematics and drawings for the garage that Lunny planned to build. They conferred several times over the course of those months.

8. In or about March 2003, McIntosh told Lunny that he did not have any more time to spend on Lunny's project, so he sent Lunny the work he had done so far.

9. Thereafter, Sampson agreed to take over Lunny's project as a favor to McIntosh, but Sampson told Lunny that he expected to be paid for his work.

10. In early April 2003, Sampson gave Lunny the work that he had produced. Thereafter, Sampson reminded Lunny once or twice that Lunny owed him money, but neither Sampson nor McIntosh ever sent Lunny a bill, and Lunny never paid Sampson or McIntosh for the work that they had done.

11. According to McIntosh and Sampson, Lunny received a total of about \$500 in services from them.

### **Conclusions of Law**

12. As an owner's representative on the school project, Lunny was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore subject to the conflict-of-interest law.

13. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

14. The services that Lunny received for his private project from McIntosh and Sampson were of substantial value.

15. Lunny took advantage of his official position as the owner's representative on the school project working with McIntosh and Sampson to obtain their services on his private project and to decline to pay them for those services.

16. Lunny's receipt of those services without paying for them where payment was expected and/or after payment was sought was an unwarranted privilege or exemption of substantial value not properly available to similarly situated individuals.

17. Accordingly, Lunny violated § 23(b)(2) by knowingly or with reason to know using his official position to secure for himself an unwarranted privilege or exemption of substantial value that was not properly available to similarly situated individuals.

### ***Resolution***

In view of the foregoing violations of G.L. c. 268A by Lunny, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Lunny:

- (1) that Lunny pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A;
- (2) that Lunny pay to the Commission the sum of \$500 in the nature of a civil forfeiture reflecting the value of the services that he received from McIntosh and Sampson; and
- (3) that Lunny waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE:** March 28, 2006